

an escheat warrant if he had known it had escheated. The expense of acquiring the title would have been no more.

Since taking it up he has paid for it and erected improvements at some considerable costs. Under these circumstances, the question is whether, in the language of the late Chancellor, it would be "according to right, to reason, and to good conscience," to deny him a grant. The Chancellor, sitting as Judge of the Land Office, as remarked in the case from which the above expressions are taken, "may decree according to equity and good conscience, and agreeably to the principles established in the High Court of Chancery, as if the matter were brought before him by a bill in chancery." *Cunningham vs. Browning*, 1 *Bland*, 319, 320. Now, upon a bill in equity, it could not, it seems to me, be successfully contended that the State, after selling her lands, as has been done in this case, receiving the purchase money, and after the innocent purchaser had erected improvements upon the property purchased, could reclaim them upon the ground that the mode in which the title was proposed to be acquired was not the appropriate one. In this case, the State has neither been defrauded nor prejudiced, and if she withholds the grant, will be inflicting a serious injury upon the purchaser, because, in that event, it would be depriving him of the privilege of testing the validity of his title in a court of law. For notwithstanding the patent may issue, its effect in passing the title may be questioned in a suit at law, and hence the general rule of the land office to issue the patent when the right is doubtful in order that the party may not be deprived of the privilege of taking the judgment of court of law upon its efficacy.

For these reasons I deem it right to overrule the *caveat* to the certificate for "*Badley's Beginning*," but shall rule it good with reference to the certificate for "*Spottsville*," in regard to which no agreement has been made, and consequently as to it the same equitable considerations do not exist.

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JONES, for Caveator.

DONE, for Caveatees.